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COUNTY OF CONTRA COSTA, JOSHUA PATZER, and  
WARREN RUPF

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHAWN DAY, individually and as  
successor in interest to the Estate of Steffen  
Matthew Day,

Plaintiff,

vs.

COUNTY OF CONTRA COSTA;  
JOSHUA PATZER; WARREN RUPF, and  
Does 1 through 50, et al.,

Defendants.

Case No. C07-4335 PJH

**[PROPOSED] ORDER ON DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE, SUMMARY  
ADJUDICATION**

Date: September 10, 2008  
Time: 9:00 a.m.  
Judge: Hon. Phyllis J. Hamilton  
Dept: Courtroom 3, 17<sup>th</sup> Floor (SF)

Defendants' Motion for Summary Judgment, or in the alternative, Motion for Summary Adjudication, came on regularly for hearing on or about September 10, 2008. After full consideration of the moving papers and supporting documents, the opposition and opposing arguments, the moving parties' reply papers and any oral arguments, if needed, the Court finds that Defendants' Motion for Summary Judgment is GRANTED in total. Defendants have shown that no genuine issue as to any material fact has been raised by Plaintiff and Defendants are entitled to judgment as a matter of law in relation to all claims set forth in Plaintiff's Complaint.

More specifically, Defendant Patzer's actions in relation to his use of deadly force against Decedent Steffen Day ("Decedent") on August 15, 2006, were objectively reasonable under the circumstances per the Fourth Amendment and did not violate Decedent's constitutional rights.

1 Defendant Patzer used deadly force to defend himself from Decedent's violent aggression and to  
 2 prevent himself from being seriously injured or killed due to Decedent's actions. As there is no  
 3 constitutional violation per the Fourth Amendment per Plaintiff's first claim for relief, Plaintiff  
 4 can also not make out any claim for a violation of the parental relationship via the Fourteenth  
 5 Amendment per Plaintiff's second claim for relief. Without an underlying constitutional violation  
 6 per the Fourth Amendment, this second claim for relief fails. In addition, as Defendant Patzer's  
 7 actions were reasonable, Plaintiff cannot make out any state law negligence or intent based claims  
 8 arising out of this shooting, negating Plaintiff's fourth and fifth claims for relief.

9 In addition, Plaintiff has have set forth any evidence to support his claim that Decedent's  
 10 death was the result of any deprivation of a constitutionally protected interest and was the result  
 11 of any custom or practice by the County or the Sheriff. As such, Plaintiff's Monell related claim  
 12 via Plaintiff's third claim for relief, cannot be proven. All in all, no claims for relief remain.

13 ACCORDINGLY, IT IS HEREBY ORDERED that DEFENDANTS' Motion for  
 14 Summary Judgment is hereby GRANTED in total. This matter is dismissed in its entirety, with  
 15 prejudice. Defendants are entitled to seek costs incurred in defending this action.

16 IT IS SO ORDERED.

17  
 18 Dated: \_\_\_\_\_

\_\_\_\_\_  
 Hon. Judge Phyllis J. Hamilton  
 United States District Judge

PROOF OF SERVICE BY MAIL (C.C.P. §§ 1013a, 2015.5)

I hereby declare that I am a citizen of the United States, am over the age of eighteen years, and not a party to the within action; my business address is 1211 Newell Avenue, Walnut Creek, California 94596.

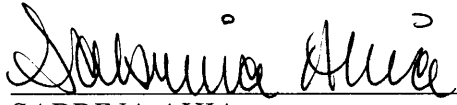
On this date I served the foregoing **PROPOSED ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION** on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope addressed as listed below for mailing. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid, in the United States Post Office mail box at Walnut Creek, California, addressed as follows:

**Attorneys For Plaintiff:**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 5, 2008 at Walnut Creek, California.

  
SABRINA AHIA